

APR 10 1978

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1977

MICHAEL RODAK, JR., CLERK

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NO. 77-1250

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INTERNATIONAL TRACERS OF AMERICA,

Appellant,

v.

ESTATE OF ERIC HARD: MINNIE  
JOHNSON, Individually and as  
Administratrix of the Estate  
of Eric Hard; SVEA HEEHN,  
ESTHER BENSON: AND HILDA  
SHIELDS, Each Individually,

Appellee.

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On Appeal From the Supreme Court of  
Washington

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MOTION TO DISMISS OR AFFIRM

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98507

## I. OBJECT

The first object of this motion is to dismiss Appellant's appeal in this case as not being within the jurisdiction of the United States Supreme Court, for the following reasons: The appeal does not present a substantial federal question for review by this Court. The federal question sought to be reviewed was neither timely nor properly raised by the Appellant. The record of the proceedings in the Washington State trial court is devoid of any evidence regarding the federal question upon which Appellant seeks review, and in fact, said federal question was never presented to the trial court. Appellant requests a review by this Court on vague and general grounds and Appellant will be unable to provide to this Court an adequate record upon which to base a reversal of the decision of the Supreme Court of the State of Washington. This

case is not of sufficient significance or merit to warrant acceptance of jurisdiction by this Court in view of the time, effort and expense that will be required to process the appeal. Finally, the object of this motion is to obtain an Order of this Court that all costs of this appeal be assessed against the Appellant.

The second object of this motion, and as an alternative to the dismissal of this appeal, is to affirm the decision of the Supreme Court of the State of Washington, for the reasons stated above.

## II. FACTS

Appellees' motions are based upon the following facts:

The entire record (Statement of Facts) of the proceedings held in the trial court consists of only thirty-one (31) pages. No witnesses testified at the trial. What evidence was presented was provided by incorporating into the record certain

interrogatories and responses to requests for admissions. The question of the validity of the statute involved, RCW 63.28.330, was not even mentioned by Appellant's counsel at the trial. See 89 Wn.2d 140, 148, 570 P.2d 131, 135 (1977).

This record, devoid of any claim that the state statute is unconstitutional, fails to provide a proper setting for review by the United States Supreme Court. The purported federal question was simply not developed at the trial level and the Supreme Court of the State of Washington had no evidence upon which to rule in Appellant's favor. So to, this Court will be faced with the same lack of evidence regarding the statute and its impact, and will be required to construe the statute on its face without the benefit of any evidentiary showing.

The statute in question is applicable to very limited factual situations. In

fact, the case sought to be appealed is the first reported decision in the State of Washington which even mentions RCW 63.28.330, in spite of the fact that the statute was enacted in 1955. Neither this case nor this statute is of sufficient significance to merit review by the highest court of our country.

### III. CONCLUSION

Appellees respectfully request this Court to enter an order dismissing this appeal, or in the alternative, affirming the decision of the Supreme Court of the State of Washington, with all costs being assessed against Appellant.

Respectfully submitted:

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